



The Workers' Compensation Liability of Contractors

This document is intended to provide general information. Since each employment situation is unique, you are encouraged to consult specific statutory provisions to determine how the law applies to your particular set of facts.

Typically, an employer is required by law to purchase workers' compensation insurance for its employees. However, even if a contractor does not have employees or does not consider its workers to be employees, the contractor may want to purchase workers' compensation insurance to protect itself from liability in the following situations:

- 1) *Uninsured Subcontractor:* A general contractor or intermediate contractor is liable for all of the workers' compensation benefits due to the injured employee of a subsequent subcontractor if that subsequent subcontractor does not have workers' compensation insurance.
- 2) *Employee Misclassification:* A contractor may consider an individual that he or she is doing business with to be an independent contractor,¹ but workers' compensation and Independent Contractor Exemption Certificate (ICEC) laws may categorize that same individual as an employee. If the individual is injured, the contractor may be determined to be the individual's employer and found liable for workers' compensation benefits.
- 3) *Self-coverage:* Contractors may want to purchase workers' compensation coverage for themselves to protect their income in the event of a work-related injury.

1. General or intermediate contractors may be liable for workers' compensation benefits when a subcontractor is uninsured.

[Minnesota Statutes § 176.215, subdivision 1 \(2010\)](#) states: "Where a subcontractor fails to comply with this chapter, the general contractor, or intermediate contractor, or subcontractor is liable for payment of all compensation due an employee of a subsequent subcontractor who is engaged in work upon the subject matter of the contract." This means that if the employee of a subcontractor is injured, and the subcontractor does not have workers' compensation insurance, the general contractor may be liable for the injured worker's benefits. If there is a chain of multiple contractors, the employee's workers' compensation benefits may be collected from any contractor up the chain. Even if a subcontractor claims to use only independent contractors and has no employees, there is still a risk that under workers' compensation law the subcontractor's workers will be considered employees. (See information regarding employee misclassification, below.)

To illustrate this, consider the following example. Homeowner A contracts with general contractor B to remodel A's home. General contractor B contracts with intermediate contractor C to perform the roofing and painting needed on A's house. Intermediate contractor C contracts with subcontractor D to provide a roofing crew for the day. Subcontractor D's employee is injured working on A's roof, but subcontractor D does not have workers' compensation insurance. General contractor B or intermediate contractor C may then be liable for workers' compensation benefits to the injured roofer, even if they do not have employees of their own.

Because of this potential liability, contractors often purchase workers' compensation insurance to protect against the risk that one of their subcontractors will be uninsured when an injury occurs.

¹An independent contractor is excluded from the Minnesota Workers' Compensation Act by Minn. Stat. § 176.041, subd. 1 (12) and is therefore not an "employee," as the term is used in workers' compensation law.

2. Contractors might have employees (for purposes of workers' compensation law) who they may not consider to be their employees.

If a subcontractor is an individual and works alone, he or she could be an employee of another contractor for purposes of workers' compensation liability. The individual may be an employee even though the contractor refers to the individual as an independent contractor, provides the individual with a tax Form-1099 instead of a W-2 at the end of the year, and does not withhold taxes from his or her paychecks. This mistake is called employee misclassification.

- A. *Construction Industry.* The Department of Labor & Industry now certifies independent contractors by issuing Independent Contractor Exemption Certificates (ICECs) under [Minn. Stat. § 181.723](#). This certification requirement became effective January 1, 2009. ICECs are only required for individuals performing residential or commercial building construction or improvement services for a construction contractor. *The fact that an individual holds an ICEC does not mean that the individual is automatically an independent contractor at all times.* To avoid misclassification in the construction industry, contractors should verify that the individual they intend to subcontract with has been issued an ICEC or is otherwise exempt from workers' compensation coverage.² For more information about ICECs, please refer to the following website: <http://www.dli.mn.gov/CCLD/ICEC.asp>.
- B. *Trucking and Messenger/Courier Industries.* Effective August 1, 2009, the determination of independent contractor status for workers operating a car, van, truck, tractor or truck-tractor that is licensed and registered by a governmental motor-vehicle agency is governed by [Minn. Stat. § 176.043](#).
- C. *Other Industries.* For information about how to determine if an individual is an independent contractor or an employee in other industries, please refer to the following website: <http://www.dli.mn.gov/WC/IndpCont.asp>.

3. Contractors may want to purchase workers' compensation coverage for themselves in case they are injured while working.

Contractors should consult an insurance agent to discuss the benefits of obtaining a workers' compensation policy and opting for personal coverage under the policy.

For more information about workers' compensation coverage, please call the Workers' Compensation Hotline at 1-800-DIAL-DLI (1-800-342-5354) and press 2. For more information about ICECs, please call (651) 284-5074.

***Note:** This information does not constitute legal advice. It is merely intended to provide an overview of the topic and is not a substitute for the advice of an attorney. The specific provisions of law effective for the date of injury involved should be consulted to determine their applicability to any particular situation. Readers are encouraged to review the applicable laws and contact the resources listed above with questions or concerns. The Department of Labor and Industry has made an effort to provide accurate and useful information, but it makes no representation and accepts no liability for any reliance on the completeness or accuracy of this information.

**This material can be given to you in different formats, such as large print, Braille or audio.
Please call (651) 284-5019 (voice) or (651) 297-4198 (TTY).**

² Verify an ICEC at <https://secure.doli.state.mn.us/lookup/licensing.aspx>. Select "Business" and then "Independent Contractor." Contractors are required to print and maintain for five years a copy of a subcontractor's ICEC from the DLI website. Persons exempt from workers' compensation coverage are described in [Minn. Stat. § 176.041](#).